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China in Law and Commerce. By T. R. JERNIGAN. (New York: The Macmillan Company. 1905. Pp. vii, 408.)

Three years ago, upon the conclusion of his term as American Consul General in China, Mr. Jernigan prepared for the press in Shanghai a volume, entitled *China's Business Methods and Policy*, a collection of papers on various topics relating to the intercourse of foreigners in China. The book before us, while rather less general in its scope, deals with the same subjects in a series of fifteen chapters that have been entirely rewritten and rearranged, greatly to the improvement of the work. It is compiled by one who, though evidently unacquainted with the language, has enjoyed a considerable experience at first hand with Chinese officials and business men and its statements and conclusions are for the most part sound as well as free from prejudice. No book of anything like the same value upon the practical operation of customary law in China has appeared in recent years, nor is there any other work so accessible and conveniently condensed that can be recommended to the intelligent student of Chinese conditions.

For this reason and because the underlying principles of Chinese polity are seldom rightly comprehended, it is worth while to examine some of the author's statements and reflections. In following the latter it is gratifying to observe a spirit of fairness toward a people that while obviously falling far short of their own high standards do not, in his estimation, appear—as we are so frequently told by travelers—to be decadent or beyond the influence of thorough-going reforms that may in a generation completely transform the nation. The extraordinary endurance of Chinese institutions is doubtless the result of causes too complex and far-reaching to be considered here, and some of these which are physical and geographical do not seem to have received the analysis they deserve in the introductory chapter on Physical Features and Origins, but the author rightly emphasizes the controlling influence of custom not only in mitigating despotism, but in maintaining under an autocracy a singularly democratic community. Nowhere in Asia have democratic ordinances survived beyond the primitive social stage. A despot at the head of society is the desire and ideal of Asiatics everywhere. But in no part of the world have despots been so successfully made to understand the limits set to their power. There are instances in plenty, of course, wherein they have abused their power, but the

Chinese can refer with some complacency to a longer period of the kind of rule of which they approved than any nation known to history. Their idea seems to have been that rather than to trust the proletariat with a share in the administration "it was safer for the general interest to put an Emperor on his good behavior, and cause him to feel that the respect which he showed for himself would be the measure of the respect which his subjects would show for him. The old law-givers have, therefore, from the foundation of the empire, made it a first maxim that the Emperor was the father of his people, and not a master placed on the throne to be served by slaves. An Emperor may be a great warrior, an able politician, and a learned prince, but these and similar qualities do not fix him in the affection of his subjects by any means as surely and firmly as governing benevolently and justly."

This theory of rule will be criticised as the embodiment of the patriarchal plan of rulership common to primitive communities. It is not unlikely that the statecraft of China, like its language, will be found by students of sociology to be only rudimentary in its development; its main interest, however, lies in the fact that the system on the whole performs its functions admirably. China today is miserable through no great fault in her political structure but because she has been terribly mismanaged by a clan of foreigners who have persistently and intentionally corrupted the best elements in the empire. What she needs, the author intimates, is not a new constitution of a European type but a return to her old order under native administrators whose instinctive appreciation of the value of their ancient system of checks and balances would reduce the present derangement to the methods best suited to the Chinese people. The attitude of her ablest men today exhibits abundant willingness to avail themselves of all the implements of modern industrial life whereby they expect to meet the competition of Western peoples, but in political or ethical philosophy they have yet to be convinced that they are greatly inferior to Europeans. This view is important and needs to be impressed upon the minds of our publicists in whose opinion China is bound to follow in the footsteps of Japan. Whether it would be wise for her to do so or not is merely an academic question; the fact remains that in view of her immense pride in the originality and suitability of her own institutions such a fundamental change as the island empire has voluntarily inaugurated within the past half-century would be impossible in China.

The main reason for this is that government in China already rests upon the will of the governed. While it is true that their affairs are for the moment badly mismanaged they feel that they are competent ultimately to rectify existing abuses if they can be rid of the fear of overwhelming forces from abroad; and on this account we see their statesmen chiefly interested in creating a sufficient military array to resist foreign aggressions. And their confidence does not appear to be unfounded when we realize that the common people have been trained for centuries in the management of their local and personal affairs. The principle of mutual responsibility, under which each unit is made accountable to the group in which it is contained, has taught them how to live with the least possible interference from authorities above them. Here, we are told, law is founded on custom, and "as the building of the governmental fabric proceeds from the family unit and not from the central authority at Peking, it is more apparent, therefore, why custom is so influential a factor in all things Chinese. The power conferred upon the *paterfamilias* or the village headman by the patriarchal principle is so mitigated by the principle of personal accountability as to result in little hardship to the individual. In like manner the *chi-hsien*, or district magistrate, the lowest grade officer in the civil hierarchy, who is invested with both criminal and civil functions, is held responsible for every disturbance in his *hsien*, and like a wise schoolmaster he seldom fails to maintain order by a shrewd mixture of authority and *bonhomie*. Government in this way is conducted with comparatively slight cost and the minimum of friction. The people are trained to consider peace and good order for their own benefit, not a thing of only theoretical or moral excellence. Probably this is as high a warrant for the regulation of society as most common people are able to comprehend.

Mr. Jernigan's chapters on the code and administration of law in China are of great interest. In no country, he declares, does the judgment of a competent court establish a precedent of greater binding force than in this empire. But precedent in a normally conservative community has become a tyrant, and the chief need is for a few original jurists who will both modify and expand the application of legal principles. The essentially democratic nature of the Chinese state is, however, chiefly evident in the operation of its commercial institutions which sometimes transcend, or rather, usurp the law-making functions of the government. The power of their guilds and

various associations is often sufficient to set the imperial authority at defiance, though, it must be added, the law-abiding instinct of the people generally restrains these organizations from becoming contumacious. In no country of the world are sound business maxims more rigorously maintained or a better *morale* established. The sanctity of a Chinese merchant's word is already pretty well known abroad, but it is interesting to observe that this business probity is due to no lofty morality but to the firm conviction that transactions can never be profitable in the long run unless credit is kept inviolable; and credit is of course based on honest dealing. Private concerns preserve the integrity of all individuals in their employ by methods of their own, even while the government is conducted by notoriously corrupt officials. Here is a new instance of the ability of the people as a whole to amend their public institutions; they must be convinced that good government is cheaper than bad and that the example of the guild may be wisely applied to the central and provincial executives. Energy expended upon moral suasion and the sin of stealing is wasted in China, but once satisfied that a governor's *vamen* may be conducted as effectively as a banker's guild in Shensi, and the Chinaman might show as pure politics as anybody in the world.

In his concluding three chapters on methods of transit in China the author is rather less convincing in his arrangement of this matter than elsewhere in his work. This is probably due mainly to the difficulty of compressing all that ought to be said in so brief a space. One would be glad to find here a sufficient *résumé* of recent railway history there, to understand the situation at the present moment, but the story is not made very clear. Perhaps it can never be told without such reflections upon the probity of the "Christian" nations as to arouse the wrath of all his readers. To some of these it will be news that all honesty is not on one side only nor all dishonesty on the other.

F. W. WILLIAMS.

Les droits législatifs du Président des États-Unis d'Amérique.

Par HENRI BOSC. (Paris: Arthur Rousseau. 1906. Pp. viii, 286.)

This monograph was written as a thesis for the doctorate in the University of Aix-Marseilles. In point of scholarship, fairness of treatment and freedom from error it is distinctly superior to the aver-